



Partisan Judicial Elections and the Distorting Influence of Campaign Cash

Billy Corriher October 25, 2012

This report is the second in a series on different policies that could help mitigate the influence of corporate campaign cash in judicial elections. The reports are intended for advocates or legislators who want to ensure our justice system works for everyone, not just those with enough money to donate.

The steep rise in campaign contributions for judicial elections has been well documented. Candidates in state supreme court races raised around \$211 million from 2000 to 2009—two and a half times more than in the previous decade.¹ The states that have seen the most campaign cash are those that hold partisan judicial elections. This year, political parties are intervening at an unprecedented level in judicial races in two states – Montana and Florida – that have nonpartisan elections.²

This report argues that partisan elections lead to more campaign contributions and increased partisanship among judges. These problems may be the reason why several states have abandoned the idea of partisan judicial elections in recent decades.³

While 38 states elect their state supreme courts, only six elect justices in partisan races—Alabama, Illinois, Louisiana, Pennsylvania, Texas, and West Virginia.⁴ All of these states are among the top ten in total judicial campaign contributions from 2000 to 2010. In fact, four of the top six states include those with partisan elections. The other states in the top six, Ohio and Michigan, have ostensibly nonpartisan elections but use partisan processes to nominate their judicial candidates.⁵

Inundated with campaign cash, courts with partisan elections have seen their share of scandals in recent years. West Virginia saw the integrity of its high court questioned when it came to light that a coal company executive spent millions in 2004 to elect a justice who subsequently voted to overturn a \$50 million verdict against his company.⁶ A similar scandal erupted that same year in Illinois, when it was revealed that the insurance and financial services giant State Farm spent millions (the actual amount of the firm's campaign spending is in dispute) to elect a justice who voted to overturn a \$1 billion class-action verdict against the insurer.⁷ The Louisiana Supreme Court was accused of bowing to pres-

sure from varied corporate interests after it took action against law school legal clinics that were investigating environmental hazards in New Orleans.⁸ The Texas Supreme Court has been the subject of multiple media reports looking into the influence of judicial campaign donors, including the poster child for corporate malfeasance, the Enron Corporation.⁹

Many of these state supreme courts—Alabama, Texas, Ohio, and Michigan—are now dominated by conservative judges that favor corporate defendants over individual plaintiffs.¹⁰ Republican justices outnumber¹¹ Democratic justices nearly two-to-one in the six states with partisan elections.¹²

Some state high court justices have publicly called for nonpartisan races. Chief Justice Wallace Jefferson of the Texas Supreme Court argues his state’s partisan system “permits politics to take precedence over merit.”¹³ Justice Maureen O’Connor of the Ohio Supreme Court says a nonpartisan primary would “keep moneyed special interests, ideologues and partisan politicians out of the courthouse.”¹⁴

Political parties funnel special interest money to judicial candidates

Why are partisan judicial races so much more expensive than nonpartisan contests? One answer could be that potential campaign donors find it easier to donate money in these races. In states with partisan judicial elections, there is a ready-built infrastructure for “bundling” donations in place, with state parties acting as conduits for special interests.¹⁵ In judicial elections, these interest groups usually include trial lawyers (for Democratic candidates) and big business groups (for Republican candidates).¹⁶

Moreover, in partisan elections, campaign donors can be much more certain of a candidate’s views prior to donating money. Partisan primaries tend to force candidates to appeal to the base constituencies of their respective parties, pushing Democrats to the left and Republicans to the right. By the time a candidate is chosen in a partisan primary, special interests can be sure the party’s candidate is a “team player.”

Not mincing words, Justice James Nelson of the Montana Supreme Court said political parties and special interests want “their judge” on the bench. “In partisan elections they have a leg up, as they already know the judge’s likely political philosophy.” Nelson also said Republican judges tend to be “pro-business, anti-government, pro-life, etc.,” while Democrats are pro-choice and less skeptical of government regulation of markets. “Each party wraps within its brand a number of different issues and ideologies,” he said.¹⁷

Removing restrictions on judicial campaigning

Justice Nelson also noted that federal courts have recently struck down statutory and ethical rules that limited the ability of judicial candidates to expound their views while campaigning. In *Republican Party of Minnesota v. White*, the U.S. Supreme Court struck down a Minnesota judicial ethics standard which forbade candidates from commenting on issues that might come before them as judges. The Court said the rule “burden[ed] a category of speech that is at the core of First Amendment freedoms—speech about the qualifications of candidates for public office.”¹⁸ The Court decreed that Minnesota cannot hold judicial elections while “preventing candidates from discussing what the elections are about.”¹⁹

Federal appeals courts have expanded this holding to strike down a variety of restrictions on judicial politicking.²⁰ The U.S. Ninth Circuit Court of Appeals recently struck down a Montana law that prohibited political parties from endorsing judicial candidates and spending money to support or oppose them. The court said the Montana law was not justified by the state’s interest in a “fair and independent judiciary.”²¹

The dissenting judge in the case argued that the majority’s decision “threatens to further erode state judges’ ability to act independently and impartially.” She called the court’s ruling “another step in the unfortunate slide toward erasing the fundamental distinctions” between elections for the judiciary and the political branches of government.²² One pundit commenting on the decision predicted that “America is going to get more of what it seems to want—state judiciaries that are as beholden to special interests, and as corrupted by money and lobbying, as the other two branches of government.”²³

Increased partisanship on the bench

In addition to increasing campaign donations, partisan elections also create a different dynamic on the bench. When justices owe their offices to political parties and their fundraising machines, they must invariably feel a certain pressure to “toe the party line.” As a consequence, the judges form liberal and conservative factions, which often lead to very clear ideological divides on these courts.

Admittedly, this phenomenon is also evident to some degree in states with nonpartisan elections. Wisconsin’s judicial races are nonpartisan, but as special interest money has flooded these elections, the Wisconsin Supreme Court has been beset by what Justice Ann Walsh Bradley termed “hyperpartisanship.”²⁴ When campaign costs rise, all judges feel the pressure to please interest groups that spend big on judicial races.

TABLE 1
Spending on Michigan judicial elections

Year	Total spending
1992	\$1,091,925
1994	\$1,403,783
1996	\$3,547,338
1998	\$3,809,581
2000	\$15,912,140
2002	\$2,011,750
2004	\$3,615,978
2006	\$1,937,066
2008	\$7,506,607
2010	\$11,132,214

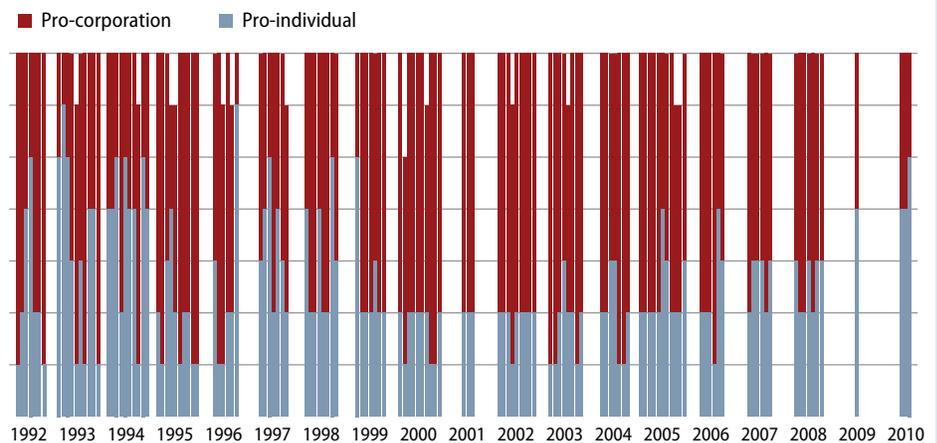
Source: http://www.mcfn.org/pdfs/reports/MICFN_HiddenInPlainViewP-rev.pdf

Because states with partisan elections see more campaign cash than other states, this “hyperpartisanship” is even more evident. Further, the experience of the Supreme Court of Michigan suggests that a partisan nominating process, more so than partisan general elections, may bear the bulk of the blame for divisiveness on the bench. Although its judicial elections are ostensibly nonpartisan, Michigan’s nominating process is in fact even more partisan than partisan primaries. Michigan’s Republican and Democratic parties choose their judicial candidates at state party conventions²⁵ where the political elites of each party select candidates in accord with the party’s views.²⁶ A recent University of Chicago study examined “whether judges are influenced by partisan considerations” and ranked the Michigan Supreme Court as the most influenced.²⁷ Justice Marilyn Kelly said the partisan nominating process “infects the process with a partisan component that is hard to deny.”²⁸

Michigan’s absurdly partisan nominating process, along with a surge in campaign spending, has resulted in a court with a very clear ideological divide. Campaign contributions in Michigan Supreme Court elections peaked in 2000, around the same time that conservative judges obtained a clear majority on the court.²⁹ The 2000 election saw candidates and independent entities spend a total of \$16 million. The Michigan Campaign Finance Network estimates that the state political parties and other organizations spent nearly \$27 million on independent political ads from 2000 to 2010, but only 22 percent of this spending was reported under state law.³⁰

An August 2012 report from the Center for American Progress included a compilation of rulings from the state supreme courts with the most campaign cash. The compilation consists of all cases from 1992 to 2010 in which an individual plaintiff sued a corporation.³¹ The appendix to this report is comprised of the compilation’s data for the Michigan Supreme Court. The appendix includes 50 cases from 1998 to 2004, the era after Republicans and pro-corporate justices gained a majority on the Michigan High Court. In 64 percent of those cases, the court was divided 5-2, with five justices voting in favor of the corporate defendant and two justices dissenting.³²

FIGURE 1
Ideological split of Michigan Supreme Court in selected cases, 1992-2010



Source: <http://www.americanprogress.org/issues/civil-liberties/report/2012/08/13/11974/big-business-taking-over-state-supreme-courts>

The chart above illustrates the court's divide in each of the 135 Michigan Supreme Court cases in the appendix. Before 1999 the court's decisions were less predictable, with a mix of results that favor individual plaintiffs and those that favor corporations. After the big money elections of 1998 and 2000, however, the 5-2 split is clear.

Party identification as relevant voter information

Conservative scholars point out that identifying judges by party gives voters at least some basis on which to make an informed decision.³³ Some might argue that partisan elections leave less room for ads funded by “independent” interest groups to define the candidates.

This argument might bear more weight if citizens had a clearer idea of what judges do on a daily basis. If voters understood how a Republican judge differs from a Democratic one in the run-of-the-mill cases that occupy most of the courts' time, then partisan identification might prove more useful. Simply labeling a judge as a Republican or Democrat probably tells most voters little about how the judges will decide cases.

When voters think of judges' political affiliation, they often think of cases involving controversial social issues, such as abortion or gay marriage, that garner a lot of media attention but constitute merely a fraction of a court's rulings.³⁴ But in the states that have seen the most judicial campaign cash, the campaign donors are not concerned with social issues. Instead, liberal judges are supported by trial lawyers who want to see judges protecting individuals' right to sue wrongdoers; conservative judges are strongly backed by corporate interest groups that want judges who will uphold “tort reform” laws that limit lawsuits.³⁵ These interest groups often fail to mention these goals in the “independent” political ads they air, instead focusing on criminal justices issues that frighten viewers.³⁶ This further muddies the water for voters seeking information to help them make their decisions in judicial races.

There are ways that states can provide voters with relevant information without relying on political parties. Ten years ago, as the surging tide of judicial campaign cash was swelling, North Carolina decided to end partisan judicial elections.³⁷ At the same time, the state implemented a public financing program, and it began distributing voter guides on judicial candidates.³⁸ Although its public financing program will face a test this year from a super PAC,³⁹ North Carolina has shown that judicial elections can be held in a manner that minimizes the influence of partisan special interests.

Conclusion

Reasonable minds can differ over whether to elect judges, but it is clear that electing judges in partisan elections leads to a myriad of problems. The U.S. Supreme Court

has loosened restrictions on judicial campaigning and struck down campaign finance rules, all in the name of the First Amendment. These developments have amplified the problems presented by partisan judicial races. In these elections, it is easier for special interests to spend money influencing the courts. Political parties serve as “bundling” agents, and they have contacts with donors that judicial candidates can exploit.

Special interests in states with nonpartisan elections may face greater difficulty in swaying voters with independent political ads. Two states—Georgia and Washington—that had never experienced high-profile judicial races saw their 2006 elections overwhelmed with money from corporate special interests. In the 2006 election for the Georgia Supreme Court, corporate-funded groups and the state Republican Party spent more than \$2 million attacking incumbent Justice Carol Hunstein, who was appointed by a Democratic governor.⁴⁰ Although she was attacked as a “liberal incumbent activist judge,” she held onto her seat in a state that strongly leans conservative. In Washington an incumbent judge was attacked with more than \$1 million worth of ads from corporate special interests and the real estate industry.⁴¹ But again the incumbent judge won, despite being outspent. Though special interests have had more success in other states,⁴² these two examples suggest that special interests might find it harder to influence nonpartisan judicial elections, at least in states where voters are accustomed to low-key, inexpensive judicial races.

Partisan primaries lead to judicial candidates who are clearly on the side of one interest group or another, and once on the bench, judges in states with expensive judicial races are dependent on special interests for their reelection. This leads to more partisanship on the bench—a court with clear conservative and liberal factions. If judges were deciding cases based on the law, one would expect that some cases would favor the plaintiff and some the defendant. That is not the case, however, in states with partisan nominating processes. The data from the Michigan Supreme Court clearly suggests that a partisan nominating process results in more campaign cash and a court where the justices’ votes break along party lines.

Additionally, partisan elections may affect the quality of jurists. A recent study examined the success rates of judicial candidates rated highly by state bar associations and found that in a partisan election, a high rating by a bar association had no impact on a candidate’s chances of winning.⁴³ Instead, voters tend to vote for the judicial candidates from the party with which they are affiliated. “By contrast, the quality of judicial candidates has a substantial effect on their vote share and probability of winning in nonpartisan elections.”⁴⁴ Another study from two conservative scholars looked at the relationship between campaign contributions and rulings in three state supreme courts. It concluded, “Campaign contributions appear to affect the outcome of cases in states where judges are elected in a partisan contest (Michigan and Texas) but not where they are elected on a nonpartisan ballot (Nevada).”⁴⁵

The *New York Times* editorial board agrees that partisan nominating processes can lead to lower-quality judges:

Requiring would-be judges to cozy up to party leaders and raise large sums from special interests eager to influence their decisions seriously damages the efficacy and credibility of the judiciary. It discourages many highly qualified lawyers from aspiring to the bench. Bitter campaigns — replete with nasty attack ads — make it much harder for judges to work together on the bench and much harder for citizens to trust the impartiality of the system.⁴⁶

Partisan politics have no place in judicial races. More than other politicians, judges are expected to be true to the law, not to political parties or campaign contributors.

Appendix

The rulings in this data set include Michigan Supreme Court cases from 1992 to 2010 in which an individual is the plaintiff, and the named defendant is a corporation, private employer, institutional health care provider, or other business. The data also include cases in which an individual is seeking workers comp benefits or benefits from an insurer. In the modern debate over tort reform, judicial activism, and the role of the judiciary, a state judge’s “ideology” often refers to the tendency to vote for corporations or individuals in these cases.

The data only include cases with a dissenting opinion, because these cases illustrate a court’s ideological divide. The data exclude cases in which judges from other courts are sitting, cases involving procedural issues, legal ethics rulings, and cases decided without an opinion, because such cases do not shed light on a court’s ideological leaning. The data also exclude cases on remand from the U.S. Supreme Court and cases reheard in light of case law handed down while the appeal was pending. In those circumstances, justices often vote to apply precedent, even though they disagree with the underlying decision. Like other studies of justices’ ideologies, the data focuses on tort and employment cases and does not include family law, property, or will and trust issues.

Listed in chronological order by year, the cases in which the court sided with the plaintiff are in blue, and the cases decided for the defendant are in red. The Michigan High Court shows a clear tendency to rule for corporations over individual plaintiffs. Out of the 134 cases in the data set, 105 resulted in a ruling for the corporate defendant. The appendix includes 50 cases from 1998 to 2004, the era after Republicans and pro-corporate justices gained a majority on the Michigan High Court. In 64 percent of those cases, the court was divided 5-2, with five justices voting in favor of the corporate defendant and two justices dissenting.

Michigan

1992

***Group Ins. Co. of Michigan v. Czopek*, 489 N.W.2d 444 (1992):** The plaintiff police officers sustained injuries while trying to subdue the insured, who was drunk and belligerent, and the insurer refused to pay the claims. A six-justice majority ruled the injuries were not covered by the insurance policy because they were not the result of an “accident”; one justice dissented.

***Rohlman v. Hawkeye-Security Ins. Co.*, 442 Mich. 520 (1992):** The plaintiff was a passenger in the insured’s van when he got out of the car to reattach a trailer, which had become unhitched from the van. The plaintiff was struck by an unidentified motorist and filed a claim with the insurer. A five-justice majority ruled the plaintiff was not covered by a personal injury policy; two justices dissented.

***Priesman v. Meridian Mut. Ins. Co.*, 441 Mich. 60 (1992):** The insured’s teenage son took her car without permission, wrecked it, and sustained severe injuries. She filed suit with her no-fault insurer after it refused the claim. A four-justice majority found that her son was covered by the policy; three justices dissented.

***Plummer v. Bechtel Construction Co.*, 489 N.W.2d 66 (1992):** The employee of the subcontractor was injured when he fell from an unguarded scaffold and sued the general contractor. A five-justice majority affirmed the judgment for the plaintiff; two justices dissented.

***Adkins v. Thomas Solvent Co.*, 487 N.W.2d 715 (1992):** Adjacent landowners sued a solvent company alleging that chemicals emanating from its property had contaminated their drinking water. A five-justice majority dismissed the plaintiffs’ claims; two justices dissented.

***Kassab v. Michigan Basic Property Ins. Ass’n*, 491 N.W.2d 545 (1992):** The insured sued his insurer, alleging that it refused to pay his fire-loss claim due to his national origin. A five-justice majority dismissed the plaintiff’s civil rights claim; two justices dissented.

***Marzonia v. Auto Club Ins. Ass’n*, 495 N.W.2d 788 (1992):** The insured was sitting in his car when he was shot in the face following an altercation and sued his insurer to recover under his personal injury policy. A six-justice majority entered summary judgment for the insurer; one justice dissented.

***Schultz v. Consumers Power Co.*, 506**

N.W.2d 175 (1993): The estate sued the power company for failing to inspect and repair a power line after the decedent was fatally electrocuted while painting a home. A five-justice majority affirmed the verdict for the plaintiff; two justices dissented.

***Dudewicz v. Norris-Schmid, Inc.*, 503**

N.W.2d 645 (1993): The employee sued his employer after he was injured when his manager physically assaulted him. A six-justice majority overruled the summary judgment for the defendant; one justice dissented.

***Pierce v. General Motors Corp.*, 504 N.W.2d**

648 (1993): The plaintiff was awarded workers compensation benefits for alcoholism and a related nervous condition. A four-justice majority ruled that alcoholism cannot be part of the disability analysis for workers compensation; three justices dissented.

***Clevenger v. Allstate Ins. Co.*, 505 N.W.2d**

553 (1993): The insured sold her car to an intoxicated person, who crashed into plaintiff after the purchase. A five-justice majority ruled the policy remained in effect after the insured transferred the title; one justice dissented.

***Moll v. Abbott Laboratories*, 506 N.W.2d**

816 (1993): The plaintiff and others sued the manufacturer of the drug DES, which her mother took while pregnant with her. She alleged DES caused her

reproductive problems and miscarriage. A four-justice majority entered summary judgment for the defendants based on the statute of limitations; three justices dissented.

***Rood v. General Dynamics Corp.*, 507**

N.W.2d 591 (1993): Two salaried employees sued their employer for wrongful termination. A six-justice majority entered summary judgment for the defendants based on the plaintiffs' at-will employment status; one justice dissented.

***Profit v. Citizens Ins. Co. of America*, 506**

N.W.2d 514 (1993): The plaintiff insured was severely injured, and his insurer deducted social security disability benefits from his benefits. A four-justice majority ruled for the insured; three justices dissented.

***Mull v. Equitable Life Assur. Soc. of U.S.*,**

510 N.W.2d 184 (1993): Due to a coworker's negligence, an employee's foot was crushed while hanging Christmas decorations at a mall. A four-justice majority affirmed the verdict against the employer's insurer; three justices dissented.

***Scott v. Harper Recreation, Inc.*, 506**

N.W.2d 857 (1993): The plaintiff sued the nightclub after he was shot six times in its parking lot. A six-justice majority entered summary judgment for the defendant; one justice dissented.

***Sobotka v. Chrysler Corp.*, 523 N.W.2d 454 (1994):** An employee was injured while inspecting a vehicle body when another body moved down the assembly line and pinned him between the two. A four-justice majority ruled the plaintiff was entitled to workers compensation; three justices dissented.

***Buczowski v. Allstate Ins. Co.*, 526 N.W.2d 589 (1994):** The insured fired a gun at the defendant's car, the bullet ricocheted and struck the claimant, and the insured sought indemnification from the home insurer. A four-justice majority overruled the summary judgment for the defendant; three justices dissented.

***Gibson v. Bronson Methodist Hosp*, 517 N.W.2d 736 (1994):** The plaintiff sued his daughter's hospital after she suffered residual effects from brain surgery. He alleged the defendant lied about the availability of a second opinion. A five-justice majority overruled the summary judgment for the defendant; two justices dissented.

***Lawrence v. Will Darrah & Associates, Inc.*, 516 N.W.2d 43 (1994):** The insured sued his insurer for lost profits when the insurer delayed paying his claim for the theft of his commercial truck. A five-justice majority overruled the directed verdict for the defendant; two justices dissented.

***McKissack v. Comprehensive Health Services of Detroit*, 523 N.W.2d 444 (1994):** An employee was injured when she fell in the employer's parking lot. A four-justice

majority ruled the employee was disabled for the purposes of workers compensation; three justices dissented.

***Pulver v. Dundee Cement Co.*, 515 N.W.2d 728 (1994):** The employer of the injured employee could not find a new job assignment which she could perform, so she moved to Florida and later rejected a new offer from the employer. A four-justice majority ruled for the employee; three justices dissented.

***Skinner v. Square D Co.*, 516 N.W.2d 475 (1994):** The estate sued the manufacturer after the decedent was electrocuted by a homemade tumbler, which included a switch made by the defendant. A five-justice majority affirmed the summary judgment for the defendant; one justice dissented.

***Paschke v. Retool Industries*, 519 N.W.2d 441 (1994):** An employee sued his employer after his workers compensation claim was denied because when he filed for unemployment, he claimed he was able to work. A five-justice majority reinstated the verdict for the employee; two justices dissented.

***Borman v. State Farm Fire & Cas. Co.*, 521 N.W.2d 266 (1994):** The insured sued her insurer after it refused the claim for damage to personal property resulting from a fire that her grandson caused at his property. A four-justice majority ruled for the plaintiff; three justices dissented.

1995

***Heniser v. Frankenmuth Mut. Ins. Co.*, 449 Mich 155 (1995):** The plaintiff sued her home insurer on a claim for fire damages that occurred after she sold the property. A five-justice majority affirmed that the plaintiff could not recover; two justices dissented.

***Auto Club Group Ins. Co. v. Marzonie*, 527 N.W.2d 760 (1995):** After a road rage incident, the insured fired his shotgun at the claimant and injured him. A six-justice majority ruled that the plaintiff's injury was not covered by the insurance policy; one justice dissented.

***Gregory v. Cincinnati Inc.*, 538 N.W.2d 325 (1995):** The employee's thumb was amputated after he was injured on a metal press manufactured by the defendant. A four-justice majority overruled the judgment for the plaintiff; three justices dissented.

***Phillips v. Butterball Farms Co., Inc.*, 531 N.W.2d 144 (1995):** The employee was injured at work, filed for workers compensation, and was terminated, all within her "probationary" period. A four-justice majority ruled for the employee; two justices dissented.

***DeMeglio v. Auto Club Ins. Ass'n*, 534 N.W.2d 665 (1995):** The plaintiff was 12 years old when she was struck by the insured's vehicle while riding her bicycle. A four-justice majority overturned the summary judgment for the plaintiff; two justices dissented.

***Bourne v. Farmers Ins. Exchange*, 534 N.W.2d 491 (1995):** The insured was injured when his car was hijacked. A six-justice majority affirmed the summary judgment for the defendant; one justice dissented.

***Drouillard v. Stroh Brewery Co.*, 536 N.W.2d 530 (1995):** The employees alleged they were compelled to accept early retirement benefits when the plant closed, foreclosing the option of coordinating disability benefits. A five-justice majority ruled for the employer; two justices dissented.

***Bertrand v. Alan Ford, Inc.*, 537 N.W.2d 185 (1995):** Customers sued the retailer after they fell on the steps at the premises. A five-justice majority reinstated the summary judgment for the defendant; two justices dissented.

***Allstate Ins. Co. v. Keillor*, 537 N.W.2d 589 (1995):** The plaintiff sued the insured after he gave alcohol to a minor, who killed the plaintiff's wife in car accident, and the insured sought indemnification from his home insurer. A six-justice majority ruled for the insurer; one justice dissented.

***Michales v. Morton Salt Co.*, 538 N.W.2d 11 (1995):** The employee filed for workers compensation after he lost his hearing due to noise at work and claimed his manic depression was aggravated by his job. A six-justice majority ruled for the employer; one justice dissented.

1996

***Corl v. Huron Castings, Inc.*, 544 N.W.2d 278 (1996):** The employee sued his employer, alleging wrongful termination. A four-justice majority ruled for the employer; three justices dissented.

***Ghrist v. Chrysler Corp.*, 547 N.W.2d 272 (1996):** The employee was injured when his hand was caught in a die manufacturer by the defendant. A six-justice majority overruled the summary judgment for the defendant; one justice dissented.

***Quinto v. Cross and Peters Co.*, 547 N.W.2d 314 (1996):** The employee sued her employer, alleging that her managers discriminated against her on the basis of age, gender, and national origin. A five-justice majority affirmed the summary judgment for the defendant; one justice dissented.

***Travis v. Dreis and Krump Mfg. Co.*, 551 N.W.2d 132 (1996):** An employee lost two

fingers when the press she was working on malfunctioned. She sued the employer, alleging that it knew the press was faulty. A five-justice majority ruled for the defendant; two justices dissented.

***Derr v. Murphy Motors Freight Lines*, 550 N.W.2d 759 (1996):** An employee was injured and had his workers compensation benefits revoked when he refused a light-duty job but had benefits reinstated upon the employer's bankruptcy. A four-justice majority ruled for the employer; two justices dissented.

***Simkins v. General Motors Corp.*, 556 N.W.2d 839 (1996):** An employee was struck by a car while walking from the employee parking lot to her workplace. A six-justice majority reversed the judgment for the employer and remanded; one justice dissented.

1997

***Town v. Michigan Bell Telephone Co.*, 568 N.W.2d 64 (1997):** Employees sued their employers, alleging they were discriminated against on the basis of age. A four-justice majority entered summary judgment for the defendant; three justices dissented.

***Haske v. Transport Leasing, Inc., Indiana*, 566 N.W.2d 896 (1997):** A firefighter was injured while pulling a victim from

a wrecked car and could not work as a firefighter but continued working his part-time job as an electrician. A four-justice majority reversed the denial of benefits and remanded; two justices dissented.

***Mason v. Royal Dequindre, Inc.*, 566 N.W.2d 199 (1997):** Plaintiffs sued the bar owners for a physical assault that occurred at the bar after one of the plaintiffs warned bar employees to call the police. A five-justice

majority ruled for the plaintiffs; two justices dissented.

***Auto-Owners Ins. Co. v. Harrington*, 565 N.W.2d 839 (1997)**: The insured shot and killed an intoxicated and aggressive man who was climbing up his garage. The insured sought indemnification from the insurer. A five-justice majority entered summary judgment for the insurer; two justices dissented.

***Empire Iron Min. Partnership v. Orhanen*, 565 N.W.2d 844 (1997)**: A four-justice majority ruled that striking employees were requalified for unemployment benefits; three justices dissented.

1998

***Hagerman v. Gencorp Automotive*, 579 N.W.2d 347 (1998)**: An employee was injured at work, drank large quantities of water per the doctors advice, and experienced complications from low sodium. A four-justice majority granted workers compensation benefits; three justices dissented.

***Klinke v. Mitsubishi Motors Corp.*, 581 N.W.2d 272 (1998)**: A father sued the car manufacturer, alleging defects that contributed to accident in which his daughter was killed. A five-justice majority ruled for the defendant and held that the seat-belt statute does not apply; two justices dissented.

***Kubczak v. Chemical Bank & Trust Co.*, 575 N.W.2d 745 (1998)**: The plaintiff realtor was injured when she allegedly slipped in oil and water outside a home that had

***Kidder v. Miller-Davis Co.*, 564 N.W.2d 872 (1997)**: A construction worker was impaled through the neck by a piece of jagged steel being hoisted on a crane and then burned by a torch. A four-justice majority affirmed the summary judgment for the contractor; three justices dissented.

***Lindsey v. Harper Hosp.*, 564 N.W.2d 861 (1997)**: The estate sued the decedent's hospital for allegedly failing to timely diagnose a post-surgical infection, leading to amputation and death. A four-justice majority ruled the claim was barred by the statute of limitations; two justices dissented.

been foreclosed upon by the defendant. A five-justice majority ruled against the plaintiff; two justices dissented.

***Jacobson v. Parda Federal Credit Union*, 577 N.W.2d 881 (1998)**: An employee reported a potentially fraudulent bond claim by her employer and sued for retaliation. A four-justice majority ruled the claim was not barred by the statute of limitations; three justices dissented.

***Chmielewski v. Xermac, Inc.*, 580 N.W.2d 817 (1998)**: An employee had a liver transplant and alleged that the employer fired him due to higher insurance premiums from the resulting medications. A five-justice majority affirmed the judgment for the defendant; two justices dissented.

***Rourk v. Oakwood Hosp. Corp.*, 580 N.W.2d 397 (1998)**: An injured nurse was terminated because she was unable to do her

job and sued for disability discrimination. A five-justice majority affirmed the summary judgment for the employer; two justices dissented.

***Morales v. Auto-Owners Ins. Co.*, 582**

N.W.2d 776 (1998): The insured refused to pay claims, alleging the policy lapsed due to untimely payments. A five-justice majority reversed summary judgment for the defendant, which had continued

accepting late payments; two justices dissented.

***McKenzie v. Auto Club Ins. Ass'n*, 580**

N.W.2d 424 (Mich., 1998): Insured nearly suffocated when carbon monoxide leaked into trailer camper in which he was sleeping. A four-justice majority entered summary judgment for auto insurer, three justices dissented.

1999

***Hoste v. Shanty Creek Management, Inc.*, 592**

N.W.2d 360 (1999): A five-justice majority ruled that the plaintiff was not entitled to workers compensation; two justices dissented.

entitled to summary judgment; two justices dissented.

***Foster v. Cone-Blanchard Mach. Co.*, 597**

N.W.2d 506 (1999): The plaintiff's hair and scalp were torn from her head after it became caught in a screw machine made by the defendant. A four-justice majority entered the summary judgment for the defendant; three justices dissented.

***Donajkowski v. Alpena Power Co.*, 596**

N.W.2d 574 (1999): Female employees sued their employer after they were the only employees assigned to a low-wage category under union contract. A five-justice majority ruled the employer could seek contribution from the union; two justices dissented.

***Farm Bureau Mut. Ins. Co. v. Nikkel*, 596**

N.W.2d 915 (1999): The insurer refused to indemnify the insured after he caused a fatal accident while driving a company truck owned by his father's business. A five-justice majority ruled for the defendant; two justices dissented.

***Henderson v. State Farm Fire and Cas. Co.*, 596**

N.W.2d 190 (1999): The plaintiff was stabbed at the insured's home. The insurer refused to indemnify tortfeasor, who was staying at the home temporarily. A five-justice majority overruled the ruling for the plaintiff; two justices dissented.

***Morosini v. Citizens Ins. Co. of America*, 602**

N.W.2d 828 (1999): The insured's car was struck in a fender-bender, and he was assaulted when he exited the vehicle to inspect the damage. He sued the insurer over the claim for his resulting injuries. A five-justice majority entered judgment for the defendant; two justices dissented.

***Smith v. Globe Life Ins. Co.*, 597**

N.W.2d 28 (1999): The estate sued the life insurer after it refused to pay a claim due to the insured's misrepresentations of his health. A five-justice majority ruled the defendant was

***DiBenedetto v. West Shore Hosp.*, 605**

N.W.2d 300 (2000): The plaintiff was injured while working as a nurse and sought workers compensation. A five-justice majority ruled for the defendant; two justices dissented.

***Yerkovich v. AAA*, 610 N.W.2d 542 (2000):**

The plaintiff's daughter was injured in a car accident and he sued the insurer over a claim for her medical expenses. A four-justice majority ruled for the insurer; one justice dissented.

***Page v. Klein Tools, Inc.*, 610 N.W.2d 900**

(2000): The plaintiff fell from a utility pole and sued a school that trained him how to climb utility poles, alleging it failed to properly train him. A five-justice majority entered summary judgment for the defendant; two justices dissented.

***Bean v. Directions Unlimited, Inc.*, 609**

N.W.2d 567 (2000): The plaintiff's developmentally disabled adult daughter was allegedly sexually abused by an employee of the defendant, a rehabilitation center. A five-justice majority reinstated the judgment for the defendant; two justices dissented.

***Stitt v. Holland Abundant Life Fellowship*, 614 N.W.2d 88 (2000):**

The plaintiff tripped over a concrete tire stop in the defendant's parking lot. A five-justice majority reinstated the judgment for the defendant; two justices dissented.

***Connaway v. Welded Construction Co.*, 614**

N.W.2d 607 (2000): An employee slipped on a pipe at a construction site and injured her right knee. A five-justice majority ruled for the employer; two justices dissented.

***Case v. Consumers Power Co.*, 615 N.W.2d**

17 (2000): Farmers sued the power company, alleging that stray voltage was responsible for their cows' low milk production. A four-justice majority vacated the judgment for the plaintiff; two justices dissented.

***Eversman v. Concrete Cutting & Breaking*, 614 N.W.2d 862 (2000):**

After an employee was unable to work due to rain, he became intoxicated and was struck by a car while crossing the street. A six-justice majority ruled for the employer; one justice dissented.

***Chambers v. Trettco, Inc.*, 614 N.W.2d 910**

(2000): An employee sued her employer, alleging that a manager had sexually harassed her. A six-justice majority ruled for the employer on the "quid pro quo" harassment claim; one justice dissented.

***Hord v. Environmental Research Institute*, 617 N.W.2d 543 (2000):**

An employee sued his employer for allegedly misrepresenting its finances after he moved to take the job just before employer went bankrupt. A five-justice majority ruled for the employer; two justices dissented.

2001

***MacDonald v. PKT, INC.*, 628 N.W.2d 33 (2001)**: Concert attendees sued the venue owners for injuries sustained after other attendees began throwing pieces of sod. A five-justice majority ruled for the defendant; two justices dissented.

***Kelly v. Builders Square, Inc.*, 632 N.W.2d 912 (2001)**: A customer sued the retailer after he was injured by falling boxes. A five-justice majority ruled for the defendant; two justices dissented.

***Oade v. Jackson Nat. Life Ins. Co.*, 632 N.W.2d 126 (2001)**: The insured was hos-

pitalized for chest pains after he applied for the policy but before he was approved, and he failed to notify insurer. A five-justice majority reinstated the summary judgment for the defendant; two justices dissented.

***Wickens v. Oakwood Healthcare System*, 631 N.W.2d 686 (Mich., 2001)**: A patient sued the hospital for failing to diagnose breast cancer. A four-justice majority threw out the plaintiff's claim for reduced chance of long-term survival; three justices dissented.

2002

***Sington v. Chrysler Corporation*, 648 N.W.2d 624 (2002)**: An employee was injured when he fell on the job but continued working with restrictions. After a nonwork-related disabling injury, he applied for workers compensation. A five-justice majority ruled for the employer; two justices dissented.

***Cox v. Flint Bd. of Hosp. Managers*, 651 N.W.2d 356 (2002)**: A mother sued after a catheter inserted into her premature son slipped out, causing him to lose half his blood and suffer permanent brain damage. A five-justice majority ruled for the hospital; two justices dissented.

***Rogers v. JB Hunt Transport, Inc.*, 649 N.W.2d 23 (2002)**: A decedent was killed when his vehicle left the highway and collided with the defendant's parked tractor trailer. A six-justice majority ruled that

the employer could not be held liable for the driver's refusal to litigate; one justice dissented.

***Koontz v. Ameritech Services, Inc.*, 645 N.W.2d 34 (2002)**: An employee sued after the employer closed her plant, gave her a lump-sum pension payment, and reduced her unemployment benefits by the amount she would have received from a monthly pension. A five-justice majority ruled for the employer; one justice dissented.

***Veenstra v. Washtenaw Country Club*, 645 N.W.2d 643 (2002)**: An employee was fired from his job at the country club after he separated from his wife and began living with another woman. A five-justice majority ruled for the defendant; two justices dissented.

***Kurtz v. Faygo Beverages, Inc.*, 644 N.W.2d**

710 (2002): An employee filed a claim for workers compensation and, when it was denied, filed an appeal. A five-justice majority dismissed the appeal because a transcript was not timely filed; two justices dissented.

***Roberts v. Mecosta County General Hosp.*, 642 N.W.2d 663 (2002):** A patient sued the hospital for allegedly misdiagnosing her and performing an unnecessary surgery which left her unable to have children. A five-justice majority ruled the claim was untimely; two justices dissented.

***Hesse v. Ashland Oil, Inc.*, 642 N.W.2d 330 (2002):** Parents sued the employer of their teenage son after they were present when their son died after an explosion. A five-justice majority ruled for the defendant; two justices dissented.

***Robertson v. DaimlerChrysler Corp.*, 641 N.W.2d 567 (2002):** An employee claims his manager demanded he work on his boat during business hours, and that when he refused, he was demoted, leading to a verbal altercation and depression. A five-justice majority ruled for the employer; two justices dissented.

2003

***Weakland v. Toledo Engineering Co., Inc.*, 656 N.W.2d 175 (2003):** An employee was injured at work, could not walk very far, and sought reimbursement under workers compensation for a scooter and a van with which to transport the scooter. A six-justice majority ruled for the employer; one justice dissented.

***Taylor v. Smithkline Beecham Corp.*, 658 N.W.2d 127 (2003):** The plaintiffs alleged injuries from fen-phen and another diet drug made by the defendant. A six-justice majority ruled for the drug company and upheld the statute precluding the suit for FDA-approved drugs; one justice dissented.

***Rednour v. Hastings Mut. Ins. Co.*, 661 N.W.2d 562 (2003):** The plaintiff was driving a car owned by the insured, stopped to change a tire, and was struck by a car. A five-justice majority ruled for the insurer and held that the plaintiff was not covered

by the policy; two justices dissented.

***Wilkie v. Auto-Owners Ins. Co.*, 664 N.W.2d 776 (2003):** The decedent was killed when he was in the insured's car, which was struck by a negligent driver. A four-justice majority ruled for the insurer; three justices dissented.

***Anderson v. Pine Knob Ski Resort, Inc.*, 664 N.W.2d 756 (2003):** A member of high school ski team lost his balance and collided with a "timing shack." A four-justice majority ruled the injuries of the plaintiff were inherent in the sport and entered judgment for the defendant; two justices dissented.

***West v. General Motors Corp.*, 665 N.W.2d 468 (2003):** An employee sued the employer after he was fired, claiming it was retaliation. The employer alleged that the employee misrepresented his overtime. A

five-justice majority affirmed the dismissal of the whistleblower claim; two justices dissented.

***Sniecinski v. Blue Cross and Blue Shield of MI*, 666 N.W.2d 186 (2003)**: An employee sued, alleging pregnancy discrimination after a job offer expired before she started and after she went on disability due to

complications. A six-justice majority ruled for the employer; one justice dissented.

***Schmalfeldt v. North Pointe Ins. Co.*, 670 N.W.2d 651 (2003)**: The plaintiff was injured in a bar fight and filed a claim with the bar's insurer. A five-justice majority ruled the plaintiff was not covered by the policy; two justices dissented.

2004

***Monat v. State Farm Ins. Co.*, 677 N.W.2d 843 (2004)**: The insured was injured when she was struck by another vehicle and received UIM benefits until she sued the driver for negligence. A five-justice majority entered the summary judgment for the insurer; two justices dissented.

***Phillips v. Mirac, Inc.*, 685 N.W.2d 174, (2004)**: The decedent was killed in an accident in a rental car, and the estate sued the rental car company for the driver's negligence. A five-justice majority ruled for the defendant and upheld the statute capping damages for rental cars; two justices dissented.

***Roberts v. Mecosta County Hosp.*, 684 N.W.2d 711 (2004)**: A patient sued the hospital for allegedly performing an unnecessary surgery, which left her unable to have children. A four-justice majority reinstated the summary judgment for the defendant; three dissented.

***Gilbert v. DaimlerChrysler Corp.*, 685 N.W.2d 391 (2004)**: An employee, who was the first female hired for her job, sued her employer for sexual harassment after several incidents of lewd conduct at work. A

four-justice majority granted the employer a new trial; three justices dissented.

***Craig ex rel. Craig v. Oakwood Hosp.*, 684 N.W.2d 296 (2004)**: The plaintiff suffered from mental retardation allegedly caused by the defendant administering too much contraction medication during his birth. A six-justice majority vacated the judgment for the plaintiff; one justice dissented.

***Ormsby v. Capital Welding, Inc.*, 684 N.W.2d 320 (2004)**: A construction worker was injured when he fell 15 feet from a negligently maintained construction site. A six-justice majority reinstated the summary judgment for the defendant; one justice dissented.

***Shinholster v. Annapolis Hosp.*, 685 N.W.2d 275 (Mich., 2004)**: The estate sued the hospital for failing to recognize decedent's "mini-strikes" before they progressed. A four-justice majority ruled for the hospital; three justices dissented.

***Bryant v. Oakpointe Villa Nursing Centre*, 684 N.W.2d 864 (2004)**: The estate sued the nursing home after the decedent fell partly off her bed and asphyxiated when

her neck was caught between the bed and the bed rail. A five-justice majority ruled

for the defendant; two justices dissented.

2005

***Nastal v. Henderson & Associates Invest., Inc.*, 691 N.W.2d 1 (2005)**: The plaintiff filed a stalking claim against the private investigator hired by the insurer in relation to a personal injury claim. A five-justice majority granted the summary judgment for the defendant; two justices dissented.

***Burton v. Reed City Hosp. Corp.*, 691 N.W.2d 424 (2005)**: The plaintiff sued the hospital, alleging he suffered internal injuries during surgery, which required further surgery. A five-justice majority reinstated the summary judgment for the defendant; two justices dissented.

***Ward v. Consolidated Rail Corp.*, 693 N.W.2d 366 (2005)**: A railroad engineer sued his employer, alleging safety violations after he was injured by a sudden stopping caused by faulty brake. A five-justice majority vacated the award for the plaintiff; two justices dissented.

***Magee v. DaimlerChrysler Corp.*, 693 N.W.2d 166 (2005)**: An employee filed a sexual harassment suit against the employer, alleging she was groped and subject to sexual advances. A five-justice majority reinstated the summary judgment for the defendant; two justices dissented.

***Jarrad v. Integon Nat. Ins. Co.*, 696 N.W.2d 621 (2005)**: The plaintiff was injured and sued his insurer for discounting his no-fault benefits for benefits under his

long-term disability policy. A five-justice majority entered the summary judgment for the defendant; two justices dissented.

***Elezovic v. Ford Motor Co.*, 697 N.W.2d 851 (2005)**: An employee sued her employer, alleging that her manager repeatedly exposed himself and requested oral sex. A four-justice majority ruled for the plaintiff; three justices dissented.

***Griffith v. State Farm Mut. Auto. Ins. Co.*, 697 N.W.2d 895 (2005)**: An insured suffered severe injuries in an accident and, after years in long-term care facilities, returned home. A four-justice majority ruled his food costs were no longer covered by the policy; three dissented.

***Henry v. Dow Chemical Company*, 701 N.W.2d 684 (2005)**: The plaintiffs sued the defendant for allegedly releasing a toxic chemical and sought a medical monitoring fund. A five-justice majority entered summary judgment for the defendant monitoring claims; two justices dissented.

***McClements v. Ford Motor Co.*, 702 N.W.2d 166 (2005)**: An employee of the contractor alleged that an employee of the defendant sexually harassed her, groping her and making sexual advances. A four-justice majority reinstated the summary judgment for the defendant; two justices dissented.

Rory v. Continental Ins. Co., 703 N.W.2d 23 (2005): The insureds were in an accident and did not know the other driver was uninsured until suing him more than a year later. UIM policy required the claims be brought within one year. A four-justice majority entered summary judgment for the insurer; two justices dissented.

Devillers v. Auto Club Ins. Ass'n, 702 N.W.2d 539 (2005): The insured suffered brain injuries in an accident. The insurer paid for home health care until the physician said close supervision was not needed. A four-justice majority granted summary judgment to the insurer; three justices dissented.

2006

Zsigo v. Hurley Medical Center, 716 N.W.2d 220 (2006): The patient sued the hospital, alleging that she was sexually assaulted by the defendant's employee while she was in the emergency room. A five-justice majority ruled to dismiss her claims; two justices dissented.

Greene v. A.P. Products, Ltd., 717 N.W.2d 855 (2006): The plaintiff sued the manufacturer of her hair oil, which was allegedly ingested by her infant son, leading to his death. A five-justice majority reinstated the summary judgment for the defendant; two justices dissented.

Radeljak v. Daimlerchrysler Corp., 719 N.W.2d 40 (2006): Foreign plaintiffs sued after their vehicle, manufactured by the defendant, allegedly shifted into reverse and plunged into a ravine. A six-justice

majority dismissed the plaintiff's claims; one justice dissented.

Cowles v. Bank West, 719 N.W.2d 94 (2006): A member of a class action added a new, related claim to the cause of action filed over the bank's excessive "documentation" fees. A four-justice majority affirmed that the class action suit tolled the statute of limitations for the new claim; three justices dissented.

Cameron v. Auto Club Ins. Ass'n, 718 N.W.2d 784 (2006): A child was riding his bike when he was struck by a vehicle, resulting in a cognitive disorder. Parents sued their personal injury insurer. A four-justice majority granted summary judgment for the insurer; three justices dissented.

2007

Perry v. Golling Chrysler Plymouth Jeep, 729 N.W.2d 500 (2007): The plaintiff was sued by the driver after she purchased car from the defendant but before the transfer of the title was recorded. A five-

justice majority reinstated the summary judgment for the defendant; two justices dissented.

***Miller v. Chapman Contracting*, 730 N.W.2d 462 (2007)**: The plaintiff mistakenly sued the defendant, rather than its bankruptcy trustee, and sought to amend his complaint. A five-justice majority affirmed the dismissal of the plaintiff's claims; two justices dissented.

***Al-Shimmari v. Detroit Medical Center*, 731 N.W.2d 29 (2007)**: The plaintiff sued the health care provider, alleging he suffered nerve damage during back surgery. A four-justice majority reinstated the summary judgment for the defendant; three justices dissented.

***Karaczewski v. Farbman Stein & Co.*, 732 N.W.2d 56 (2007)**: An employer transferred the plaintiff to a job in Florida, where he fell from a ladder and injured

his knee. The plaintiff left the job and later claimed workers compensation. A four-justice majority ruled against the plaintiff; three justices dissented.

***Liss v. Lewiston-Richards, Inc.*, 732 N.W.2d 514 (2007)**: Landowners sued the home construction company, alleging the work was incomplete and shoddy. A five-justice majority granted summary judgment for the defendant; two justices dissented.

***Trentadue v. Buckler Lawn Sprinkler*, 738 N.W.2d 664 (2007)**: The estate discovered, 16 years later, that the defendant's employee raped and murdered the decedent while working for her landlord. A four-justice majority granted summary judgment for the defendant three justices dissented.

2008

***Mcdonald v. Farm Bureau Ins. Co.*, 747 N.W.2d 811 (2008)**: The insured was injured in an accident with an underinsured motorist. A four-justice majority granted summary judgment for the defendant; three justices dissented.

***Ross v. Blue Care Network of Michigan*, 747 N.W.2d 828 (2008)**: The insured developed cancer of the blood cells, sought immediate treatment after being told he had a week to live, and had his claims denied. A five-justice majority reinstated the judgment for the insurer; two justices dissented.

***Ross v. Auto Club Group*, 748 N.W.2d 552 (2008)**: The plaintiff ran a sole proprietor-

ship and filed a claim with his insurer after being injured in a car accident. A five-justice majority ruled he was entitled to workers compensation benefits; two justices dissented.

***Stokes v. Chrysler LLC*, 750 N.W.2d 129 (2008)**: An employee filed for workers compensation after a doctor concluded that physical activity at work aggravated his arthritis. A four-justice majority overruled the decision granting benefits to the employee; three justices dissented.

***Allison v. Aew Capital Management, L.L.P.*, 751 N.W.2d 8 (2008)**: The plaintiff sued the apartment complex manager after slipping on one to two inches of snow in the park-

ing lot and breaking his ankle. A five-justice majority granted summary judgment for the defendant; two justices dissented.

***Boodt v. Borgess Medical Center*, 751 N.W.2d 44 (2008)**: The plaintiff sued for malpractice after the decedent died from heart trouble. A four-justice majority reinstated the summary judgment for the defendant because the notice of intent to sue lacked suf-

ficient detail; three justices dissented.

***Brackett v. Focus Hope, Inc.*, 753 N.W.2d 207 (2008)**: An employee did not attend a mandatory event and suffered depression after the resulting arguments with managers. A four-justice majority ruled she was not entitled to workers compensation; three justices dissented.

2009

***Petersen v. Magna Corp.*, 773 N.W.2d 564 (2009)**: An employee was injured when he fell from a truck while loading Christmas

trees. A four-justice majority affirmed the ruling for the employee on attorney's fees; three justices dissented.

2010

***Bezeau v. Palace Sports & Ent. Inc.*, 795 N.W.2d 797 (2010)**: A pro-hockey player signed a contract with the Michigan team and was injured in Canada. He then stayed there and became a resident. A four-justice majority awarded workers compensation after he was reinjured; three justices dissented.

***O'neal v. St. John Hosp. & Med. Ctr.*, 791 N.W.2d 853 (2010)**: A patient alleged the defendant's misdiagnosis and delay in treatment resulted in complications from sickle cell anemia. A five-justice majority reversed the summary judgment for the defendant; two justices dissented.

Endnotes

- 1 High court candidates from 2000-2009 spent \$210,859,178, which amounts to 2.6 times more than the \$82,460,441 spent from 1990-1999. See National Institute on Money in State Politics, "National Overview Map, High Court Candidates," <http://www.followthemoney.org/database/nationalview.phtml?l=0&f=J&y=2012&abbr=0>.
- 2 In this year's retention election, the Florida Republican Party has joined independent groups in opposition to three Florida Supreme Court justices. See: Jane Musgrave, "Republican Powerhouses Urge GOP to Leave Supreme Court Justices Alone," *Palm Beach Post*, October 8, 2012, available at <http://www.postonpolitics.com/2012/10/republican-powerhouses-urge-gop-to-leave-supreme-court-justices-alone/>. The Sanders County Republican Central Committee successfully sued to invalidate Montana's ban on political parties endorsing and spending money for high court candidates. See: *Sanders County Republican Committee v. Bullock*, No. 12-35543 (9th Cir. Sept. 17, 2012).
- 3 Arkansas implemented nonpartisan judicial elections in 2001, North Carolina in 2004. Georgia ended partisan judicial elections in 1983, and Tennessee ended them in 1994. Brandice Canes-Wrone, Tom S. Clark, "Judicial Independence and Nonpartisan Elections," (August 2008): 35-36, available at <http://userwww.service.emory.edu/~tclark7/nonpartisan-lawreview.pdf>.
- 4 American Judicature Society, "Methods of Judicial Selection," available at http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm. Each justice on the New Mexico Supreme Court runs in a partisan election after being nominated by the Governor from a list compiled by a nominating commission. Once on the court, the justices run in nonpartisan, uncontested retention elections.
- 5 The states with the most expensive judicial races, 2000-2010, are Alabama (\$44.4 million); Ohio (\$24.3 million); Texas (\$22.6 million); Illinois (\$23.7 million); and Pennsylvania (\$22.1 million). The next highest state was Michigan with \$15.3 million, which, like Ohio, uses a partisan process to nominate judicial candidates. See *National Institute on Money in State Politics*, "National Overview Map, High Court Candidates."
- 6 *Caperton v. Massey Coal, Inc.*, 129 S. Ct. 2252 (2009).
- 7 *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100 (2005); Ann Maher, "Supreme Court won't reopen *Avery v. State Farm*," *The Madison Record*, November 17, 2011, available at <http://www.madisonrecord.com/news/239796-supreme-court-wont-reopen-avery-v-state-farm>. Maher notes that the plaintiffs' attorneys alleged State Farm donated \$2 million to the Illinois Civil Justice League and the U.S. Chamber of Commerce, both of which ran ads for Justice Karmeier. She also notes that a former FBI agent swore that the judge knew that State Farm "used the Civil Justice League to elect him."
- 8 CBS News, "Justice for Sale?" Feb. 11, 2009, available at http://www.cbsnews.com/2100-500164_162-175831.html.
- 9 Nate Blakeslee, "How Enron Did Texas," *The Nation*, March 4, 2002, available at http://www.thenation.com/article/how-enron-did-texas?page=0_2; Jim Yardley, "Bankrupt: Texaco, and Texas Justice," *The New York Times*, April 14, 1987, available at <http://www.nytimes.com/1987/04/14/opinion/bankrupt-texaco-and-texas-justice.html?scp=2&sq=colonels%20in%20mirrored%20sunglasses&st=cse>.
- 10 Billy Corriher, "Big Business Taking Over State Supreme Courts" (Washington: Center for American Progress, 2012), available at <http://www.americanprogress.org/issues/civil-liberties/report/2012/08/13/11974/big-business-taking-over-state-supreme-courts>.
- 11 This disparity may be amplified by the fact that the Alabama and Texas high courts each have nine members, more than the other courts, and both of these states have leaned heavily toward Republicans in recent elections. These two high courts also have six-year terms, shorter than the other courts. This may have allowed the trend towards conservative, pro-corporate high courts to emerge more quickly in these states.
- 12 There are 28 Republicans and 15 Democrats on the six high courts with partisan elections. The Alabama and Texas high courts each have nine Republicans and zero Democrats. The West Virginia Supreme Court of Appeals has four Democrats and one Republican. The Pennsylvania high court is evenly split, with three Justices from each party. The Louisiana and Illinois Supreme Courts each include four Democrats and three Republicans. See *National Institute on Money in State Politics*, "National Overview Map, High Court Candidates, 2010."
- 13 Morgan Smith, "Chief Justice Delivers State of the Judiciary," *The Texas Tribune*, Feb. 23, 2011, available at <http://www.texastribune.org/texas-courts/texas-judicial-system/chief-justice-delivers-state-of-the-judiciary/>.
- 14 James Nash, "O'Connor wants to end partisan primaries in Supreme Court races," *The Columbus Dispatch*, September 13, 2010, available at <http://www.dispatch.com/content/stories/local/2010/09/14/oconnor-wants-to-end-partisan-primaries-in-supreme-court-races.html>. Some in Ohio disagreed. See Thomas Suddes, "A century later, Ohio judicial elections remain half-reformed," *The Cleveland Plain-Dealer*, January 15, 2011, available at http://www.cleveland.com/opinion/index.ssf/2011/01/a_century_later_ohio_judicial.html.
- 15 See Michael S. Kang & Joanna M. Shepherd, "The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisionmaking," 86 N.Y.U. L. Rev. 69, 107 (2011) (noting that political parties are "natural bundling agents that coordinate sprawling political coalitions").
- 16 See Ross Ramsay, "What Comes with Tort Reform?" *The Texas Tribune*, August 29, 2011, available at <http://www.texastribune.org/texas-special-interest-groups/texans-for-lawsuit-reform/collateral-politics-what-comes-tort-reform/>; Stephanie Mencimer, *Blocking the Courthouse Door*, Chapters 2-4, Free Press, 2006.
- 17 Email from Justice James Nelson, Supreme Court of Montana, Sept. 19, 2012 (on file with author). Nelson emphasized that his views were his own, not those of the Montana Supreme Court.
- 18 *Republican Party v. White*, 536 U.S. 765, 774 (2002).
- 19 *Republican Party v. White*, 536 U.S. 765, 788 (2002).
- 20 See *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002); *Buckley v. Ill. Judicial Inquiry Bd.*, 997 F.2d 224 (7th Cir. 1993).
- 21 *Sanders County Republican Central Committee v. Bullock*, No. 12-35543, p.9 (9th Cir. Sept. 17, 2012) (Rakoff, J. sitting by designation).
- 22 *Sanders County Republican Central Committee v. Bullock*, No. 12-35543, p.4-5 (9th Cir. Sept. 17, 2012) (Schroeder, J. dissenting).
- 23 Andrew Cohen, "A New Gold Rush: Montana's Judicial Elections Are About to Get Political," *The Atlantic*, Sept. 21, 2012, available at <http://www.theatlantic.com/national/archive/2012/09/a-new-gold-rush-montanas-judicial-elections-are-about-to-get-political/262613>.
- 24 Justice Ann Walsh Bradley, interview with author, June 16, 2012.
- 25 Michigan Compiled Laws § 168.392 ("At its fall state convention, each political party may nominate the number of candidates for the office of justice of the supreme court as are to be elected at the next ensuing general election.")
- 26 Michigan Judicial Selection Task Force, "Report and Recommendations" (April 2012): 5 ("The close link between

- candidates for the supreme court and the political parties that Michigan's current process signals may suggest to the voters that justices decide cases merely to carry out the political platforms of their respective parties.”)
- 27 Stephen Choi, Mitu Gulati, and Eric Posner, “Which States Have the Best (and Worst) High Courts?” Duke Law School Faculty Scholarship Series, Paper 168, May 1, 2008, available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2803&context=faculty_scholarship.
 - 28 Justice Marilyn Kelly, remarks at American Constitution Society Annual Convention, June 16, 2012.
 - 29 National Institute on Money in State Politics, “National Overview Map, Michigan.”
 - 30 Michigan Campaign Finance Network, “\$70 Million Hidden in Plain View: Michigan’s Spectacular Failure of Campaign Finance Disclosure, 2000-2010;” Appendix A: Summaries of Michigan Supreme Court Campaigns, 1984-2010,” June 2011, available at http://www.mcfn.org/pdfs/reports/MICFN_HiddenInPlainViewP-rev.pdf, (listing expenditures for television “electioneering” ads, which are not reported under state law). The data includes \$26,653,657 in independent spending, and \$20,840,500 of that spending went toward electioneering communications, which are not disclosed under state law.
 - 31 Billy Corriher, “Big Business Taking over State Supreme Courts:” The appendix consists of high-court rulings for the six states that have seen the most judicial campaign contributions in from 1992-2011. The rulings include cases in which an individual is the plaintiff, and the named defendant is a corporation, private employer, institutional health care provider, or other business. The rulings include cases with a dissenting opinion, as those cases illustrate a court’s ideological divide. The appendix excludes cases in which a judge from another court is sitting, cases decided without an opinion, and rulings involving procedural issues or legal ethics. The appendix excludes cases on remand from the U.S. Supreme Court and cases reheard in light of case law handed down while the appeal was pending.
 - 32 See *Appendix*. The appendix includes 50 cases from 1998-2004, and in 32 of those cases, the court voted 5-2 for the corporate defendant. These figures only include cases in which the entire seven-member court voted.
 - 33 See Michael DeBow and others, “The Case for Partisan Judicial Elections,” *The Federalist Society for Law and Public Policy Studies*, January 1, 2003, available at <http://www.fed-soc.org/publications/detail/the-case-for-partisan-judicial-elections>; Andrew Henson, “Should Voters Pick Justices Blindly?” John W. Pope Civitas Institute, June 15, 2011, available at <http://www.nccivitas.org/2011/should-voters-pick-justices-blindly/>.
 - 34 See Grant Schulte, “Iowans dismiss three justices, Des Moines Register, November 3, 2010, available at <http://www.des-moinesregister.com/article/20101103/NEWS09/11030390/iowans-dismiss-three-justices>. (“Three Iowa Supreme Court justices lost their seats Tuesday in a historic upset fueled by their 2009 decision that allowed same-sex couples to marry”); Americans United for Life, “Preparing for the Day After Roe,” available at <http://www.aul.org/courts/state-supreme-courts/> (last accessed October 11, 2012). (“Many state supreme courts are hotbeds of judicial activism. Already, sixteen activist state supreme courts have invented a right to abortion in their state’s constitution.”)
 - 35 See Stephanie Mencimer, *Blocking the Courthouse Door*, Chapters 2-4 (Free Press, 2006).
 - 36 Adam Skaggs, Maria da Silva, Linda Casey, and Charles Hall, “The New Politics of Judicial Elections 2000-2009” pp. 25-36, Brennan Center for Justice, *Justice at Stake*, National Institute on Money in State Politics, available at http://brennan.3cdn.net/23b60118bc49d599bd_35m6vyon3.pdf.
 - 37 North Carolina Bar Association, “Judicial Selection in North Carolina,” available at <http://www.ncbar.org/about/communications/judicial-selection.aspx> (last accessed October 11, 2012).
 - 38 North Carolina State Board of Elections, “2010 General Election Judicial Candidate Voter Guide,” available at www.ncsbe.gov/GetDocument.aspx?id=2408 (last accessed October 11, 2012).
 - 39 Craig Jarvis, “New super PAC gets involved in Supreme Court race to back Newby,” *News & Observer*, June 2, 2012, available at <http://www.newsobserver.com/2012/06/02/2105910/new-super-pac-formed-to-help-re.html>.
 - 40 James Sample, Lauren Jones, and Rachel Weiss, “The New Politics of Judicial Elections 2006,” *Justice at Stake*, Brennan Center for Justice, National Institute on Money in State Politics, pp. 22-23, available at http://brennan.3cdn.net/49c18b6cb18960b2f9_z6m62gwji.pdf.
 - 41 National Institute on Money in State Politics, “Independent Expenditures by Target,” available at <http://www.followthemoney.org/database/StateGlance/ierace.html?osID=10087&y=2006&s=WA> (last accessed October 11, 2012).
 - 42 However, recent judicial elections in Wisconsin have proved that special interests can play a crucial role in nonpartisan elections. In the 2011 election, the state’s public financing system was overwhelmed by “independent” ads from special interest groups. See Billy Corriher, “Big Business Taking over State Supreme Courts,” pp. 20-23, available at <http://www.americanprogress.org/issues/civil-liberties/report/2012/08/13/11974/big-business-taking-over-state-supreme-courts>.
 - 43 Claire S. H. Lim, James M. Snyder, Jr., “Elections and Government Accountability: Evidence from the U.S. State Courts,” Feb. 22, 2012, available at http://www.yale.edu/leitner/resources/papers/Election_paper_Jim_CL.pdf. This study focused on trial court judges, not state Supreme Court justices.
 - 44 Claire S. H. Lim, James M. Snyder, Jr., “Elections and Government Accountability: Evidence from the U.S. State Courts,” p. 3.
 - 45 Chris Bonneau and Damon Cann, “The Effect of Campaign Contributions on Judicial Decisionmaking,” Working Paper, (2009) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1337668. In contrast to the findings of these scholars, a 2006 story in The Los Angeles Times described conflicts of interests related to campaign donations to Nevada Supreme Court justices. Michael Goodman and William Rempel, “In Las Vegas, They’re Playing with a Stacked Judicial Deck,” The Los Angeles Times, June 8, 2006, available at <http://www.latimes.com/la-na-justice080606.0.4781277.story>.
 - 46 Editorial, “No Way to Choose a Judge,” *The New York Times*, March 15, 2012, available at <http://www.nytimes.com/2012/03/16/opinion/no-way-to-choose-a-judge.html>.